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& Effie Horning

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

Miss World Limited, a foreign company, Plaintiff, v. Phoenix Pyre Productions, a general proprietorship, and Effie Horning, an individual, Defendants.	Case No. 08 CV-0712 LAB (NLS) **DEFENDANTS' ANSWER AND COUNTERCLAIM**

ANSWER

Defendants Effie Horning and Phoenix Pyre Productions, by and through the undersigned attorneys, answer the Complaint of Plaintiff Miss World Limited as follows:

1. Defendants admit that they have used and continue to use the name and mark "Ms. World." Defendants deny that such use causes confusion. Plaintiff's assertion that it is the owner of the name and mark MISS WORLD rests on legal conclusions, and thus does not require an answer, and is based on facts which are not known to Defendants.

2. Defendants admit that the complaint filed by Plaintiff alleges the causes of action set forth in paragraph 2 of the complaint. Defendants do not challenge this Court's jurisdiction.

3. Defendants do not challenge this Court's jurisdiction.

4. Defendants do not challenge this Court's jurisdiction.

5. Defendants do not dispute that this is a proper venue.

6. On information and belief, Defendants admit the allegations of Paragraph 6 of the Complaint.

7. Admit.

8. Admit.

9. Defendants are without information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 9 of the Complaint and therefore deny them.

10. Defendants are without information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 10 of the Complaint and therefore deny them.

11. Defendants are without information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 11 of the Complaint and therefore deny them.

12. Defendants are without information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 12 of the Complaint and therefore deny them.

13. Defendants are without information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 13 of the Complaint and therefore deny them.

14. Defendants are without information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 14 of the Complaint and therefore deny them.

15. Defendants are without information sufficient to form a belief as to the truth of the remaining allegations set forth in Paragraph 15 of the Complaint and therefore deny them.

16. Deny.

17. Admit.

18. Admit.

19. Admit.

20. Admit that Horning registered the domain name "msworld.biz." Admit that she registered that domain name on November 24, 2006, but she first registered the domain name on or about January 1, 2000. Admit that Defendants use the domain name to promote their pageants. Admit that Exhibit B is a printout from Defendants' website. Deny that at the time of the registration of the domain name Miss World's MISS WORLD mark was distinctive and famous.

21. Admit the allegations of Paragraph 21 except for the legal conclusion that Horning's application is "abandoned."

22. Admit.

23. Deny.

24. Defendants are without information sufficient to form a belief as to the truth of the allegations as to when Plaintiff began using the MISS WORLD mark. Defendants deny that her marks are "Infringing Marks."

25. Deny.

26. Deny.

27. Deny.

28. Deny.

29. Deny.

30. Deny.

31. Deny except the allegation that if Defendants are granted registrations on their marks, they will have at least prima facie evidence of the exclusive right to use the "MS. WORLD" mark.

32. Deny.

33. Deny.

34. Deny.

35. Defendants reassert and incorporate by reference each of their answers to Paragraphs 1-34.

36. Deny.

37. Defendants reassert and incorporate by reference each of their answers to Paragraphs 1-36.

38. Deny.

39. Defendants reassert and incorporate by reference each of their answers to Paragraphs 1-38.

40. Deny.

41. Defendants reassert and incorporate by reference each of their answers to Paragraphs 1-40.

42. Deny.

43. Defendants reassert and incorporate by reference each of their answers to Paragraphs 1-42.

44. Deny.

45. Defendants reassert and incorporate by reference each of their answers to Paragraphs 1-44.

46. Deny.

47. Defendants reassert and incorporate by reference each of their answers to Paragraphs 1-46.

48. Deny.

49. Deny.

50. Defendants reassert and incorporate by reference each of their answers to Paragraphs 1-49.

51. Deny.

52. Deny.

53. Defendants reassert and incorporate by reference each of their answers to Paragraphs 1-52.

54. Deny.

AFFIRMATIVE DEFENSES

(First Defense)

Plaintiff's claims are barred under the doctrine of laches.

(Second Defense)

Plaintiff's claims are barred under the doctrine of collateral estoppel.

(Third Defense)

Plaintiff's claims are barred because of Plaintiff's abandonment of its alleged mark.

COUNTERCLAIM

THE PARTIES

1. Defendant and Counter-claimant Effie Horning is an individual residing in the County of San Diego.

2. Horning is informed and believes, and on that basis alleges, that Plaintiff and Counter-defendant Miss World Limited ("Miss World") is a foreign corporation organized under the laws of the United Kingdom.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this counterclaim under 28 U.S.C. §§ 1338(a) and 1367(a). This Court has personal jurisdiction over Miss World because Ms. World has availed itself of the rights and privileges of this forum by suing Horning in this District.

4. Venue is proper in this Court under 28 U.S.C. § 1391(c) and (d).

COMMON ALLEGATIONS

5. Horning has been conducting the Ms. World pageant since 1998. The Ms. World pageant is different from more traditional "beauty" pageants in that it places a greater emphasis on the contestants' personalities, intelligence, and accomplishments.

6. In February 2005, Horning filed trademark application nos. 78/564,133 and 77/075,449 with the United State Patent and Trademark Office, seeking registration of the mark "Ms. World" for use in the "Entertainment in the nature of beauty pageants, beauty pageant awards shows, spokesmodel talent competitions, and fashion shows" and "Charitable Fund Raising Services" classes.

7. The pageant world is a crowded one. Unaffiliated with Horning's Ms. World pageant and Miss World's pageant, there are pageants for Mrs. World, Miss Latina USA World, Ms. Fitness World, Miss Asian World Beauty Pageant, Miss Islands of the World, Miss Cyberworld, and Miss Nude World—all with marks registered by the USPTO. These listed pageants are only the ones containing the word "world" in the titles that also have registered marks. This list is not exhaustive of pageants that use the word "world" in their titles.

8. In light of the crowded nature of the field, the Ninth Circuit in *Miss World (UK) Limited v. Mrs. America Pageants, Inc.*, 856 F.2d 1445, 1449 (9th Cir. 1988) held that Miss World was "merely one of a crowd of marks. In such a crowd, customers will not likely be confused between any two of the crowd and may have learned to carefully pick out one from the other."

9. The Ninth Circuit's reasoning is sound. Those persons who take part in the pageant field—primarily participants and sponsors—know well the differences between the various pageants, including the very real differences between Miss World and Ms. World. Thus, there is no likelihood of confusion when it comes to these two marks.

10. Nevertheless, Miss World opposed Horning's trademark registrations, and after Horning filed a motion for summary judgment in the TTAB, they requested and were granted a stay of the TTAB proceedings.

CAUSE OF ACTION

(Declaratory Relief)

11. Horning incorporates by reference the allegations in paragraphs 1-10 as if fully set forth herein.

12. There exists a real and substantial dispute between the parties as to Horning's right to use the Ms. World mark. Horning therefore asks for a declaration from this Court to the effect that: (1) there is no likelihood of confusion between the Miss World and Ms. World marks, and (2) Horning is entitled to registration of the Ms. World mark with the USPTO.

PRAYER FOR RELIEF

Wherefore Horning prays for relief as follows:

1. That this Court issue a declaration to the effect that: (1) there is no likelihood of confusion between the Miss World and Ms. World marks, and (2) Horning is entitled to registration of the Ms. World mark with the USPTO;

2. That Horning be awarded her costs; and

3. That Horning be awarded all such other relief that the Court finds appropriate.

Dated: May 16, 2008

TURNER GREEN AFRASIABI & ARLEDGE LLP

By: [signature]
Christopher W. Arledge
Attorneys for Defendant, Phoenix Pyre Productions & Effie Horning

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2008, I caused to be electronically filed the foregoing **DEFENDANTS' ANSWER AND COUNTERCLAIM** with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Sarah Silbert Fulbright & Jaworski LLP 555 South Flower St., 41st Fl. Los Angeles, CA 90071 *Attorneys for Plaintiff Miss World Limited*	Richard Groos C. Ashley Callahan Fulbright & Jaworski LLP 600 Congress Ave., Ste. 2400 Austin, TX 78701 *Attorneys for Plaintiff Miss World Limited*

/s/Christopher W. Arledge

Christopher W. Arledge